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"TMDL 101"

by Congressman Allen Boyd

The Clean Water Act requires states to identify pollution-impaired water segments and develop "total maximum daily loads" (TMDLs) that set the maximum amount of pollution that a water body can receive without violating water quality standards. If a state fails to do so, the Environmental Protection Agency (EPA) is required to develop a priority list for the state and its own TMDL determination. Most states lack the resources to perform TMDL analysis, which involves complex assessments of water quality problems, pollution sources and needed pollution reductions. In addition, EPA has been reluctant to override the states and has also lacked resources to do the analysis. Thus, there has been little implementation of the provision (Section 303 (d)), which Congress enacted in 1972.

Since 1995, citizen groups have filed more than 30 lawsuits in 35 states against EPA and states, claiming they have failed to fulfill CWA requirements. The lawsuits have increased public attention to the TMDL program. Of the suits tried or settled to date, eleven have resulted in court recommendations from an advisory group on regulatory and administrative changes to strengthen and clarify the TMDL program. These recommendations formed the basis of the program changes that EPA proposed in August 1999; the final rules were signed on July 11, 2000. The new rules set forth criteria for states, territories and Indian tribes to identify impaired waters and establish all TMDLs within 15 years. It would require more comprehensive assessments of waterways, detailed cleanup plans, and timetables for implementation. To say that these rules have been controversial is an understatement.

The truth is that TMDL rules are fundamentally flawed. Independent scientific reviews of the rules have confirmed criticism by the National Academy of Science's National Research Council that EPA's science does not support its decision-making. The General Accounting Office has concluded that EPA did not perform important cost-benefit analysis required by law, thereby greatly understating the costs of these rules that the states estimate could exceed a billion dollars annually. Finally, after last-minute negotiations with Washington insiders - behind closed doors and outside of public view - EPA made a number of substantial changes to the rules while depriving the public an opportunity to comment on them.

This rule-making could drastically and negatively impact the district I represent in North Florida, because it is a very rural <http://www.epa.gov/owow/tmdl/advisory.html> . area that is economically dependent on agriculture and forestry. For this reason, I authored the Florida delegation letter to EPA Administrator Browner that discussed our deep concerns with the original proposal. I also signed a letter with my colleagues on the House Appropriations Subcommittee on Agriculture to Administrator Browner that shared our objections to the proposed rule-making. Many of my colleagues are equally concerned and they have held twelve

congressional hearings regarding the impacts of the TMDL program and other water quality activities on the agriculture and forestry industries.

Several pieces of legislation have been introduced to deal with the rules and I am a cosponsor of H.R. 3625, which would exempt agriculture and forestry activities from the permit requirements under the CWA; H.R. 4502, which would delay implementation of new TMDL rules for a period of time pending a study by the National Academy of Sciences (NAS), require that the science be peer reviewed, and mandate that the definitions of agriculture and forestry activities could not be changed until the CWA is reauthorized or reviewed; and H.R. 4922, which would address the major weaknesses in the EPA rule-making process on the TMDL rules by requiring further public comment, analysis and scrutiny of the revisions to the TMDL program.

As the end of the 106th Congress draws near, I have been actively working with my colleagues on the Appropriations Committee to add a provision an appropriation bill, not to stop the TMDL rules, but rather slow them down so that they could be done properly. If the EPA were interested in responsible policy making, they would withdraw their rules, do a legitimate cost analysis and independent science review, and then allow the public to judge them in a fair and open process. We all want clean water, but lets make sure that our data is accurate and our science is sound before imposing rules that could have drastic implications on the many Americans whose livelihoods are at stake.